

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.761 OF 2018

Ramchandran Ananthan Pothi ... Petitioner

Vs

The Union of India and Ors. ... Respondents

Mr.Naresh Jain a/w Ms.Neha Anchlia for the Petitioner.

Mr.Suresh Kumar for the Respondents.

**CORAM : S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**

TUESDAY, 4TH SEPTEMBER, 2018

P.C. :

1 The petitioner in this petition says that the return of income was filed for Assessment Year 2014-2015. The assessment was completed under Section 143(3) of the Income Tax Act 1961 by the third respondent. An Appeal was preferred before the Commissioner of Income Tax (Appeals). A show cause notice was issued for launching the prosecution under Section 276(C)(1) of the Income Tax Act 1961 by the second respondent and, by the impugned order, the competent authority has granted sanction/authorization for launching prosecution

against the petitioner.

2 It is claimed that this prosecution is launched on the footing that the return was filed, it was selected for scrutiny, assessment was completed and an order was passed assessing income of Rs.2,49,10,960/-. The Department proceeds on the footing that the assessee did not disclose his true and correct income while filing his return. The record was perused by the Sanctioning Authority and it came to the conclusion that certain transactions are not genuine but bogus. There were investigations also launched by the Directorate of Kolkata. This is a case where the tax was attempted to be evaded.

3 Though on this show cause notice it is claimed that a hearing was granted, but the eventual order of sanction was not served.

4 The petitioner in the memo of the writ petition has categorically stated that in relation to the Assessment Order and being dissatisfied therewith, an Appeal is filed before Commissioner of Income Tax (Appeals). That Appeal is still pending.

5 We inquired from the petitioner's advocate as to whether the petitioner sought any interim relief/stay during the pendency of the Appeal and he says that, that was not sought in the hope and anticipation that the Appeal itself would be disposed of.

6 We find that interest of justice would be served if we dispose of this writ petition by keeping larger and wider question open. In the event, the petitioner seeks a stay of the order passed by the Assessment Officer by making a stay application, then, during the pendency of such application, the criminal prosecution should not be launched and, if it has been already launched, the same shall not proceed. Thus, the ad-interim stay granted by this Court would continue till the disposal of the application for stay by the First Appellate Authority.

7 It is stated that the petitioner will file this stay application within one week from the date of receipt of copy of this order. If that is filed and the Commissioner is seized of it, then, until the stay application is disposed of and the order on same is communicated to the petitioner, the prosecution launched pursuant to the order of

sanction shall not proceed.

8 We clarify that we have not expressed any opinion on the merits of the rival contentions.

9 The writ petition is disposed of accordingly.

B.P .COLABAWALLA, J.

S.C. DHARMADHIKARI, J.